

Appl. No. 10/050,801
December 11, 2003
Reply to Office Action of August 11, 2003

REMARKS/ARGUMENTS

Claims 1 and 22 have been amended, and claims 11 and 23 canceled. The subject matter canceled from claims 11 and 23 has been incorporated into their respective independent claims. Claims 1-10, 12-22 and 24-25 are pending. No new matter is added.

By way of the Office Action mailed August 11, 2003, Examiner Bui rejected claims 22 under 35 U.S.C. § 102(b) as allegedly being anticipated by *Julius* (US 5,542,567). This rejection is respectfully traversed to the extent that it may apply to the presented claim. Applicant submits that the rejection of this claim is now moot, because as amended, *Julius* does not, and cannot as discussed below, teach each and every limitation of the presently claimed invention.

By way of the Office Action mailed August 11, 2003, Examiner Bui rejected claims 1 – 25 under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Julius* (US 5,542,567) in view of *Spruyt et al.* (US 3,784,056) and *Huang et al.* (US 6,269,970). This rejection is respectfully traversed to the extent that it may apply to the presented claims. Applicant submits that the rejection of these claims is now moot, because as amended or argued, none of the art of record, alone or in combination, teaches or suggests the presently claimed invention.

For example, the present invention recites, *inter alia*, (i) a the pop-up style dispensing partition comprising a dispensing orifice through which a wipe from the group of wet wipes is removed from the package when the top is open, and (ii) the container top having a second visibility index and the pop-up style dispensing partition having a third visibility index and (iii) the first visibility index is different than the third visibility index such that when the container top is closed the wipe from the group of wet wipes is visibly indicated at the container top as being in-position or not-in-position for pop-up dispensing as soon as the container top is next opened and (vi) the container top having a Visibility Indication of at least 1 and no more than 4. This combination of features is completely absent from the teaching in *Julius* which only teaches a pop-up type of wipes package with (Fig. 10) a lid 38 on a box 58, the lid including a cap 70 over a slit 64 where tissues are withdrawn. There is simply no teaching within *Julius* which would suggest its be modified to comprise the recited package for storing and dispensing wet wipes in a pop-up format, having the combination of features of three visibility indexes which interact to visibly indicate at the container top that the next wipe is in-position or not-in-position for pop-up dispensing as soon as the container top is next opened. Moreover, such is not particularly true in light of the additional limitation to the product claims 1-14 and 22-25 which recite the container top having a Visibility Indication of at least 1 and

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no more than 4 (taught throughout the applicants' specification, and for example, at pages 9-11). Additionally, such is contrary to the teaching in *Julius* which sets forth that the package is designed to prevent fallback of a wipe (e.g., col. 5, lines 35-47 and col. 6, lines 58-65), thus making a need for the present invention irrelevant. As concerns method claims 15-21, *Julius* clearly lacks the teaching or suggestion necessary to perform the recited steps of applicants' invention, for similar reasons. At best, *Julius* teaches a wipe having a first visibility index and the lid and cap having a second visibility index (i.e., merely due to the nature of the different material make up for the wipes versus the package components). However, there is no teaching in *Julius*, and in fact *Julius* teaches away from any such modification, as to what degree to differentiate the visibility indexes of the wipe and the lid to get the recited visibility indication at the container top, and further to do so with a top that is not transparent and is not opaque, but rather is in between these extremes with a Visibility Indication of at least 1 and no more than 4.

Spruyt et al. does not compensate for the deficiencies in *Julius*. In fact, *Spruyt et al.* has even less to do with applicants' invention than *Julius* does. *Spruyt et al.* is directed to a moisture-impermeable package, which preferably has a transparent cover through which the wet wipers are withdrawn. There is no teaching for several of the elements of applicants' invention. Moreover, the package in *Spruyt et al.* would make irrelevant applicant's invention because with a transparent top, and no type of pop-up dispensing orifice, it is always known that the next wipe is recessed within the package and/or the wipe is always clearly viewable through the top so no need for a visibility indication positioning and relationship between the dispensing portions of the package. To construct and use a package as recited by applicants is absent from, and contrary to, *Spruyt et al.*, and thus to use such teaching to somehow modify *Julius* to arrive at applicants' invention, is impossible, not to mention improper under the patent laws.

Huang et al. also does not compensate for the deficiencies in *Julius* or *Spruyt et al.* *Huang et al.* is a wet wipes container having a lid. There is no teaching for a pop-up style dispensing orifice or any partition between the base and the lid. In fact, this would be contrary to *Huang et al.* While *Huang et al.* teaches that the container can be constructed of materials that are transparent, translucent or opaque, such falls far short of teaching the necessary relationships and values of visibility indexes recited as applicants' invention. Additionally, since *Huang et al.* is a reach-in dispenser, for reasons similar to *Spruyt et al.*, it would be irrelevant to modify, or use to modify, to obtain applicants' invention. To construct and use a package as recited by applicants is contrary to *Julius*, and then to simply, with hindsight using applicant's present invention as a template, combine the teaching of *Huang et al.* is contrary to *Huang et al.* and improper under the patent

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laws. Accordingly, the rejection of the claims based on *Julius* in view of *Spruyt et al.* and *Huang et al.* is requested to be withdrawn.

In conclusion, all of the grounds raised in the outstanding Office Action for objection to or rejecting the application are believed to be accommodated, overcome or rendered moot. *Julius* fails to teach or suggest all elements of applicants' invention, and *Spruyt et al.* and *Huang et al.* are similarly deficient. Moreover, even if *Spruyt et al.* and *Huang et al.* did contain the needed elements of applicants' invention, none of the cited references contain the necessary teaching or suggestion necessary to so combine the references to render obvious applicants' invention. Thus, it is respectfully submitted that all of the presently presented claims are in form for allowance and such action is requested in due course.

Also submitted at this time is a request for a one month extension of time.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 920-721-6854.

Respectfully submitted,

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CERTIFICATE OF MAILING

I, Dianna M. Rockey, hereby certify that on December 11, 2003 this document is being facsimile transmitted to: Attn: Examiner Luan K. Bui (703-872-9306), Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: 

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